



June 26, 2001

Ms. Zandra L. Narvaez  
Attorney  
Legal Services Division  
City Public Service of San Antonio  
P.O. Box 1771  
San Antonio, Texas 78296-1771

OR2001-2719

Dear Ms. Narvaez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148823.

The City of San Antonio's City Public Service (the "CPS") received a written request for records pertaining to the following categories of information with regard to the "Van Raub Project":

1. Specific importance of habitable structures within 200 feet of the transmission line.
2. Planned distribution of electric power from the substation.
3. EMF from the transmission line and from the buried distribution lines at full load.
4. Additional cost of the buried distribution lines, relative to overhead lines.

You state that CPS does not possess any records responsive to items 1 and 2 listed above. Based on your representation, we conclude that CPS is not required to obtain information not in its possession or to prepare new information in response to these requests. Open Records Decision No. 445 (1986). You contend that items 3 and 4 do not constitute proper requests for information under the Public Information Act. In the alternative, you contend that records responsive to items 3 and 4 are excepted from required public disclosure pursuant to section 552.103 of the Government Code.

It is not clear to this office your precise objection to the nature of items 3 and 4. We agree with your contention that the Public Information Act does not require a governmental body to answer factual questions or to, in effect, respond to legal interrogatories. *See* Open Records Decision No. 347 (1982). The act applies only to information already transcribed into tangible form. On the other hand, a request for records made pursuant to the Public Information Act may not be disregarded simply because a citizen does not specify the exact documents he desires. When a requestor makes a vague request, the governmental body should make a good faith effort to advise the requestor of the type of documents available so that the requestor may narrow or otherwise clarify the request. *See* Open Records Decision No. 87 (1975).

In this instance, you have identified documents responsive to items 3 and 4 and submitted those records to this office for review. We therefore conclude that these two requests were sufficiently specific so as to adequately identify the records being sought.

We note that the requestor contends, and that you do not dispute, that he previously requested the information responsive to item 3 in a written request to CPS dated February 27, 2001, and that CPS did not request a decision from this office at that time as to whether those records may be withheld from the public.<sup>1</sup> Section 552.301(a) of the Government Code requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold unless there has been a previous determination that the requested information is excepted from required public disclosure. When a governmental body fails to comply with the requirements of section 552.301, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. Gov't Code § 552.302; *see also Hancock*, 797 S.W.2d at 381.

A compelling reason for withholding information is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Records Decision No. 150 (1977). Section 552.103 of the Government Code is a discretionary exception that does not constitute "other law" that makes information confidential. *See* Open Records Decision No. 542 (1990) ("litigation exception" does not implicate third party rights and therefore is waivable by a governmental body). Because you have not demonstrated a compelling reason for withholding the information responsive to item 3, we conclude that CPS must release this information in its entirety to the requestor.

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<sup>1</sup> Although it is not clear to this office the precise date on which CPS received the February 27 request, CPS responded to the requestor in writing on March 6, 2001.

With regard to the two documents you submitted to this office as being responsive to item 4, we note that these documents are specifically made public under section 552.022(a)(5) of the Government Code. Section 552.022 provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

....

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate.

You describe the information submitted as responsive to item 4 as a “worksheet projecting the potential additional cost” of the buried distribution lines. As noted above, section 552.103 of the Government Code is a discretionary exception, and therefore is not “other law” for purposes of section 552.022(a). You do not argue, nor does this office believe, that the information responsive to item 4 is made confidential by a law outside the Public Information Act. We therefore conclude that the information you have submitted to this office as being responsive to item 4 is expressly made public by section 552.022(a)(5) of the Government Code and therefore must be released to the requestor in its entirety, as must all of the information held by CPS that is responsive to item 3 of the request.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

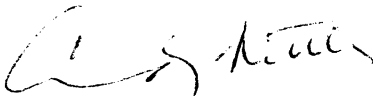
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/RWP/seg

Ref: ID# 148823

Enc. Submitted documents

c: Mr. Charles Urban  
310 FM 3351 South  
Boerne, Texas 78006  
(w/o enclosures)